

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 1287 of 1993****For Approval and Signature:****HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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HUSSAIN ABDUL REHMAN - Appellant(s)**Versus****AHMEDA YUSUFBHAI KALU & 2 - Defendant(s)**

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Appearance :

MR MA KHARADI for Appellant(s) : 1,
None for Defendant(s) : 1 - 2.
MR SANDIP C SHAH for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**Date : 24/01/2007****ORAL JUDGMENT**

1. The appellant has challenged in this appeal the compensation awarded by MACT [Special] Ahmedabad (Rural) at Ahmedabad on the ground that it is inadequate. The

appellant had preferred MACP No. 214 of 1986 to obtain compensation for the injuries received by him and also the resultant effect on his earning capacity in an accident which occurred on 10th July, 1984. It was his say that on that day he was travelling in a truck bearing registration no. GRN 3238 since he was working as a cleaner on that truck. It was driven by respondent no. 1. The truck was owned by respondent no. 2 and it was insured with respondent no. 3. It was the say of the appellant that the truck was going from Godhra to Ahmedabad for unloading the goods in New Laxmi Saw Mills in Odhav area. He had further averred that the truck was driven at excessive speed and in negligent manner. Even when they reached the place, when respondent no. 1 was required to take the vehicle in reverse, he did so in such a speed and in that manner he even did not allow the appellant to get down from the truck and to give signal in reversing the vehicle. The appellant was in the process of getting down, when respondent no. 1 all of a sudden took the vehicle in reverse. As a result of which the appellant fell down and received injuries. He received serious injuries on body including fracture on right leg below knee joint. He was admitted in the Government hospital at Ahmedabad on the same day as indoor patient. According to the appellant he remained as

indoor patient for sufficiently long period. Even after his discharge from the hospital for follow up treatment he was treated as outdoor patient. He, therefore, ultimately preferred the aforesaid petition under the provisions of the Motor Vehicles Act for claiming the compensation of Rs.25,000=00.

2. The claim was resisted by the respondents. Respondents no. 1 and 2 filed written statement at Exh. 10. It was contended that the monthly income of the appellant was Rs.350=00 and he sustained injuries because of his own negligence. So far as respondent no. 3 insurance company was concerned, it filed written statement at Exh. 20. It contended *inter alia* that the Tribunal had no jurisdiction to try the petition.

3. On the basis of the material produced before it, the Tribunal came to the conclusion that the injures were suffered by the appellant due to negligent driving of respondent no. 1. The Tribunal also assessed the compensation at Rs.16,140=00. The Tribunal delivered the judgment and award on 18th January, 1993. The appellant has now sought enhancement in the compensation.

4. I have heard Mr. Sandip Shah learned advocate

for respondent no. 3 insurance company. I have also perused the record and proceedings of the case. It is an admitted position that on the date of the accident, the appellant was travelling in the offending vehicle since he was working as cleaner. The offending vehicle had travelled from Godhra to Ahmedabad for unloading the goods at Odhav. At that time, according to the appellant, due to negligent driving of respondent no. 1 he sustained injuries. Of course, so far as the negligence on the part of respondent no. 1 is concerned, it is a disputed fact and not admitted by the respondents, but the Tribunal has found that respondent no. 1 was rash and negligent while driving the vehicle on the date of the accident. None of the respondents has challenged this finding either by filing substantive appeal or by way of cross objections. Hence, this finding has become final. There is no need for me to have the detailed discussion on it. Suffice it to say that I have perused the reasonings given by the Tribunal and I am in total agreement with it.

5. So far as the quantum of compensation is concerned, the Tribunal appears to have committed error on two counts; firstly, that in spite of the fact that the injured appellant was aged 22 years, the Tribunal has applied multiplier of 12; and secondly though the

Tribunal has accepted the say of the appellant that he was drawing salary of Rs.600=00 per month, the Tribunal has not taken care to award future loss of income on the basis of increase in income in future. In other words, the Tribunal has not considered the fact that the future income would increase with the passage of time and it would not remain static at Rs.600=00. Though respondent no. 2 has said that he was giving salary of Rs.350=00 per month, the Tribunal has chosen to accept the version of the appellant and in my opinion rightly so. This is the income the appellant was having by of salary per month. It is an admitted position that he was aged 22 years only when the accident occurred and, therefore, he had a long way to go in life and earn sufficient amount for his own maintenance as well as maintenance of the family. The income would not have remained static in that case. By applying formula evolved in the decision rendered by the Division Bench of this Court in the case of **Ritaben alias Vanitaben Wd/o. Dipakbhai Haribhai v. Ahmedabad Municipal Transport Service reported in 1991 (1) GLR p.388**, the future and prospective income could be assessed at Rs. 900=00. Considering the disability at 10%, the monthly loss would be Rs.90=00x 12 = Rs.1,080=00. Considering the age of the appellant, the Tribunal ought to have applied the multiplier of 17. If that is done, the future loss of

income would come to Rs.18,360=00. The Tribunal has already awarded Rs.8,640=00. Therefore, the appellant deserves to have Rs.9,720=00 as additional award under this head. The policy at Exh. 35 shows that wider coverage is given for the driver and the cleaner by charging additional premium. In view of the same, the liability of the insurance company is not limited to statutory liability i.e., as provided under Workmen Compensation Act. Since the claim is restricted to Rs.25,000=00 the appellant is entitled to receive Rs.8860=00 by way of compensation together with interest at the rate of 12% per annum from the date of the application till realization and proportionate costs on the additional award. Thus, the appeal is allowed.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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